

RECORDATION NO. 22969-B FILED

OCT 29 '04 11:40 AM

SURFACE TRANSPORTATION BOARD

OF COUNSEL
URBAN A. LESTER

ALVORD AND ALVORD
ATTORNEYS AT LAW
1050 SEVENTEENTH STREET, N.W.
SUITE 301
WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

October 29, 2004

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Assignment and Assumption Agreement, dated as of October 29, 2004, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Lease which was previously filed with the Board under Recordation Number 22969.

The names and addresses of the parties to the enclosed document are:

Seller: NBB North America Co., Ltd.
230 Park Avenue, 32nd Floor
New York, New York 10169

Buyer: Babcock & Brown Rail Funding LLC
230 Park Avenue, 32nd Floor
New York, New York 10169

Mr. Vernon A. Williams
October 29, 2004
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A description of the railroad equipment covered by the enclosed document
is:

240 aluminum rapid discharge coal cars: COMX 9001 – COMX 9025
(excluding COMX 9062, COMX 9108, COMX 9199, COMX 9209 and
COMX 9222) .

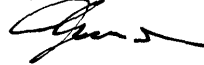
A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$30.00 payable to the order of
the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the
undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm
Enclosures

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EXECUTION VERSION

**SURFACE TRANSPORTATION BOARD
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement, dated as of October 29, 2004 (this "Agreement"), is between NBB North America Co., Ltd., a Japanese corporation (the "Seller"), and Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Buyer").

Witnesseth:

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement [NBB/BBRF] dated as of October 29, 2004 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

1. Definitions. Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.
2. Assignment. Effective as to each item of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest, except as reserved under Section 2.1 of the Purchase Agreement, in and to such item and assigns to the Buyer all of the Seller's rights and obligations, except to the extent constituting Existing Obligations, under each of the following as they relate to such item:
 - (a) Lease Agreement No 1519-01 dated May 22, 1998, by and between the Seller (as assignee of General Electric Railcar Services Corporation), as lessor, and Exelon Generation Company, LLC (as assignee of Commonwealth Edison Company), as lessee (the "Lessee"), as amended, modified or supplemented from time to time (the "Lease");
 - (b) Rider No. 1 forming part of Lease Agreement No. 1519-01 dated April 25, 1995, by and between the Seller (as assignee of General Electric Railcar Services Corporation) and the Lessee (as assignee of Commonwealth Edison Company);
 - (c) Consent to Assignment and Assumption by the Seller and Confirmation of Assumption by the Lessee dated October 30, 2001; and
 - (d) the bill of sale dated June 26, 2000, from General Electric Railcar Services Corporation to the Seller (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.

The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Assigned Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the lessor under the Assigned Operative Agreements, except to the extent constituting Existing Obligations.

4. Definitions. Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

Bill of Sale: as to any one or more items of Equipment, a bill of sale in the form of Exhibit B hereto.

Closing Date: as to any one or more items of Equipment and related Ownership Interest, the date of the Bill of Sale with respect thereto.

Equipment: the items of equipment listed on Exhibit A hereto, together with each and every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as an "item" or "items of Equipment").

Existing Obligations: any and all liabilities and obligations of Seller under the Ownership Interest, including the Assigned Operative Agreements, or otherwise relating to the Equipment in each such case, to the extent arising or occurring prior to the Closing Date (whether or not asserted or assessed), and, with respect to the obligations, to have been performed by Seller prior to the Closing Date.

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreements, except the Existing Obligations.

5. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. Notices. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. Headings. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.


9. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

10. Recordation. The Seller and the Buyer agree to record this Agreement with the Surface Transportation Board to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease, which shall have been recorded with the Surface Transportation Board.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

BABCOCK & BROWN RAIL FUNDING LLC,
as Buyer

By: 
Name: Ross Sullivan
Title: Vice President

NBB NORTH AMERICA CO., LTD.,
as Seller


By: _____
Name:
Title:

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

BABCOCK & BROWN RAIL FUNDING LLC,
as Buyer

By: _____
Name:
Title:

NBB NORTH AMERICA CO., LTD.,
as Seller

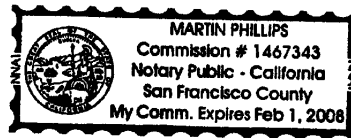
By:  _____
Name: Bruce J. Carusi
Title: Attorney-in-Fact

State of California)
)
County of San Francisco)

On this, the 26 day of October, 2004, before me, a Notary Public in and for said County and State, personally appeared Ross Sullivan, the Vice President of Babcock & Brown Rail Funding LLC, who acknowledged himself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Martin Phillips
Notary Public



My Commission Expires: 2/1/08
Residing in: San Francisco

State of New York)
)
County of New York)

On this, the 27th day of October, 2004, before me, a Notary Public in and for said County and State, personally appeared Bruce J. Carusi, the Attorney-in-fact for NBB North America Co., Ltd., who acknowledged himself to be the Attorney-in-fact for NBB North America Co., Ltd., and that, as such Attorney-in-fact, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Karen A. Houlihan
Notary Public

My Commission Expires: _____

Residing in: _____

KAREN A. HOULIHAN
Notary Public, State of New York
No. 01HO6051904
Qualified in New York County
Commission Expires December 4, 2006

**Exhibit A
(to Assignment
and Assumption Agreement
and Bill of Sale)**

EQUIPMENT

<u># Cars</u>	<u>Year Built</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
240	1995	4074 CF rotary Aluminum Rapid Discharge IV coal cars, 286,000 GRL, AAR car type code K341, built by Trinity Industries, Inc.	COMX 9001-9245, inclusive	COMX 9062, 9108, 9199, 9209 and 9222

**Exhibit B
(to Assignment
and Assumption Agreement)**

BILL OF SALE

On this ____ day of October, 2004, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NBB North America Co., Ltd. ("Seller"), does hereby sell, transfer and assign to Babcock & Brown Rail Funding LLC ("Buyer") all of Seller's rights, title and interest in and to the equipment described in Exhibit A hereto (the "Equipment"), subject to the terms and conditions of the Purchase Agreement [NBB/BBRF] dated as of the date hereof (the "Purchase Agreement") and the Assignment and Assumption Agreement dated as of the date hereof, each between Seller and Buyer.

Seller represents and warrants to Buyer and its successors and assigns that at the time of delivery of the Equipment, Seller had legal title thereto and good and lawful right to sell the Equipment, and the Equipment was free and clear of all Liens (as defined in the Purchase Agreement), other than as described in Section 3.3 of the Purchase Agreement.

NBB NORTH AMERICA CO., LTD.

By: _____
Name:
Title:

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: _____

10/29/04



Robert W. Alvord